IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1222 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

MINOR HARESHBHAI T KANJIYA HEIR OF DECEASED

Appearance:

1. Special Civil Application No. 1222 of 2003

MR MG NAGARKAR for Petitioner No. 1

RULE SERVED for Respondent No. 1-6

MR HEMANT S SHAH for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. With the consent of the learned advocates

appearing for the parties, the present petition is taken up for final hearing today.

2. The present petition is preferred under Article 227 of the Constitution of India challenging the order dated 22-7-2001 passed by the Motor Accident Claims Tribunal (Main), Surendranagar passed below the application exh. 22 filed under Section 140 of the Motor Vehicles Act, 1988 in Motor Accident Claim Petition No.422 of 1998, for getting interim compensation.

3. Learned advocate appearing for the petitioner submittfsed that the impugned order passed by the Motor Accident Claims Tribunal, Surendranagar below the application for interim application under Section 140 of the Motor Vehicles Act, 1988 is absolutely dehors to the power, jurisdiction and authority. It is also contended that whenever there is a vehicular accident between the motor-vehicle/s and train carrying the passengers, the Motor Accident Claims Tribunal constituted under the the Motor Vehicles Act, 1988 has no jurisdiction, authority and powers to entertain any application for compensation, damages etc. It is also submitted by the petitioner that in such cases instead of preferring the application before the Motor Accident Claims Tribunal under the Motor Vehicles Act, 1988, the application ought to have been preferred under Section 125 of the Railways Act, 1889 to be read with Section 124 thereof and u/s 13 of the Railway Claims Tribunal Act, 1987 before the Railway Claims Tribunal and only, the Railway Claims Tribunal has jurisdiction, authority and powers to entertain the application for compensation in case of an accident between the motor vehicle and the railway carrying passengers. Learned advocate appearing for the petitioner has relied upon Section 2 (28) of the Motor Vehicles Act, 1988 and submitted that the railway engine or a vehicle running on fixed rail is excluded from the purview of the word "motor-vehicle" or the word "vehicle" and hence the Motor Accident Claims Tribunal has no jurisdiction and authority to award any compensation much less under Section 140 of the Motor Vehicles Act, 1988, popularly known as "No fault liability". Therefore, the impugned order passed by the Motor Accident Claims Tribunal is dehors to the provisions of law. It is also submitted by the learned advocate appearing for the petitioner that whenever there is special Act namely the Railways Claims Tribunal Act, 1987, the said Act shall prevail upon the Motor Vehicles act, 1988. This aspect of the matter has not been appreciated by the Motor Accident Claims Tribunal and hence the impugned order is illegal and erroneous and the same deserves to be quashed

and set aside.

4. Learned advocate appearing for the Insurance Company has submitted that the order passed by the Motor Accident Claims Tribunal is just and proper as well as in consonance with law and facts of the case and the Motor Accident Claims Tribunal has got power, jurisdiction and authority to decide the matter on hand. One of the vehicles if found to be the motor vehicle within the meaning of Section 2 (28) of the Motor Motor Vehicles Act, as defined in Section 2 (28) of the Motor Vehicles Act, the Motor Accident Claims Tribunal has jurisdiction, authority and powers to decide the case on hand. It is also submitted by the learned advocate appearing for the respondent Insurance Company that the Motor Accident Claims Tribunal has jurisdiction even in the cases in which there is sole negligence of the railway authority, there are cases of be some contributory negligence of the owner or the driver of the motor vehicle, there always is power, jurisdiction and authority with the Motor Accident Claims Tribunal to decide the case. In the extreme possibility of 100% negligence of the railway authority also, if one of the vehicles involved in the accident is a motor-vehicle within the meaning of Section 2 (28) of the Motor Vehicles Act, 1988, the Motor Accident Claims Tribunal has jurisdiction to try and application for compensation or damages. Therefore, the impugned order passed by the Motor Accident Claims Tribunal is true, correct and legal and hence the petition deserves to be dismissed.

5. I have perused the relevant papers on record and the impugned order passed by the Motor Accident Claims Tribunal as well as relevant provisions of the relevant Acts. Following are the relevant provisions of law, necessary for arriving at a conclusion of legal submissions made by the learned advocates appearing for the parties.

(A) Section 140 of the Motor Vehicles Act, 1988 :

"Liability to pay compensation in certain cases on the principle of no fault -

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay

compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty-five thousand rupees).

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason or any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section.

(B) Section 2(28) of the Motor Vehicles Act, 1988 :

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not be attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres]"

(C) Section 13 of the Railway Claims Tribunal Act.

"13 - Jurisdiction powers and authority of Claims Tribunal :-

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act -

(a) relating to the responsibility of the railway administration as carriers under Chapter VII of the Railways Act in respect of claims for -

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway;

(ii) compensation payable under Section 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

["(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989, all such jurisdiction powers and authority

as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under Section 124-A of the said Act or the rules made thereunder".]

(2) The provisions of Railways Act, 1989 and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act."

(D) Section 82A of the Indian Railways Act, 1890.

82A : Liability of railway administration in respect of accidents to trains carrying passengers. (1) When in the course of working of a railway an accident, occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train or any part of a train carrying passengers, then, whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a person who has been injured or has suffered loss to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding any other provision of law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction or deterioration or animals or goods owned by the passengers and accompanying the passenger in his compartment or on the train, sustained as a result of such accident.

(2) The liability of a railway administration under this section in no case exceed (twenty thousand rupees) in respect of any one person."

6. From the aforesaid provisions of the said Act, it is crystal clear that whenever the application is preferred under Section 140 of the Motor Vehicles Act, 1988 and if the accident arises out of the use of the motor vehicle, always the Motor Accident Claims Tribunal under the Motor Vehicles Act, 1988, has got power, jurisdiction and authority to decide the same. It is not necessary that if one of the vehicles is a train or railway or vehicle runs on fixed rail, the jurisdiction of the Motor Accident Claims Tribunal is ousted. On the

contrary, on plain reading of Section 140 of the Motor Vehicles Act, 1988, it is sufficient if an accident has arisen because of one of the vehicles is a motor-vehicle, as defined in Section 2 (28) of the Motor Vehicles Act, 1988.

7. Learned advocate appearing for the petitioner has another angle of reading of Section 140 of the Motor Vehicles Act to the effect that if one of the vehicles in case of vehicular accident is not a motor vehicle within the meaning of Section 2 (28) of the Motor Vehicles Act, 1988 in that case the Motor Accident Claims Tribunal ceases to have power, jurisdiction and authority to entertain the case. This contention of the petitioner is incorrect and illegal. This aspect of the matter has been decided by the Hon'ble Apex Court in the case of Union of India Vs. Bhagawati Prasad (Dead) & Ors, reported in 2002 (3) G.L.R. 1981 particularly paragraph No 3. Relevant portion of para 3 of the said judgment reads as under :

"Para 3. ... A combined reading of Secs. 110, 110A, which deal with the constitution of one or more Motor Accidents Claims Tribunals and application for compensation arising out of an accident, as specified in sub-sec. (1) of Sec.110 unequivocally indicates that the Claims Tribunal would have the jurisdiction to entertain application for compensation both by the persons injured or legal representatives of the deceased when the accident arose out of the use of a motor-vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of the use of a motor vehicle and railway train, then all those persons injured or legal representative of the deceased could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer or the motor vehicle but also against the Railway Administration. Once, such an application is held to be maintainable and the Tribunal entertains such an application, if in course of enquiry the Tribunals comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the motor vehicle then the Tribunal cannot beheld to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Accident Claims Tribunal would be entitled to

award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held it was the sole negligence on the part of the Railway Administration. To denude the Tribunal of its jurisdiction on a finding that the driver of the motor vehicle was not negligent, would cause undue hardship to every claimant and we see no justification to interpret the provisions of the Act in that manner. The jurisdiction of the Tribunal to entertain application for compensation flows from the provisions contained in Section 110A read with Sub-sec. (1) of Sec.110. Once, the jurisdiction is invoked and is exercised the said jurisdiction cannot be divested of on any subsequent finding about the negligence of the tortfeasor concerned. It would be immaterial if the finding is arrived at that it is only the other joint tortfeasor who was negligent in causing the accident and not the driver of the motor vehicle. In our considered opinion, the jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of the use of motor vehicle depends essentially on the fact whether there had been any use of motor vehicle and once that is established, the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at a later point of that time that it is the negligence of the other joint tortfeasor and not the negligence of the motor vehicle in question. We, are therefore, of the considered opinion that the conclusion of the Court in the case of Union of India Vs. United India Insurance Co. Ltd. 1997 (8) SCC 683 to the effect,

"it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of Sec.110(1) of the Act because the case would then become one of exclusive negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal."

8. From the aforesaid pronouncement of the law and on plain reading of Sections 140 of the Motor Vehicles

Act, 1988, the impugned order passed by the Motor Accident Claims Tribunal is perfectly correct, just, proper and in consonance with law and the facts and hence the present petition deserves to be dismissed.

9. In view of the above discussion, there is no substance in the petition. Accordingly, this petition is dismissed. Rule is discharged, with no order as to costs.

(D.N. Patel, J.)
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